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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROGELIO LOPEZ,

Defendant and Appellant.

G051634

(Super. Ct. No. 09NF2322)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Edward Hall, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Richard Power, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

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Following his conviction for hit and run with injury, defendant Rogelio Lopez, after a hearing before the Victim Compensation and Government Claims Board (the Board) was ordered to pay \$5,669.72 to the victim in addition to the court's initial restitution order. The trial court reviewed, in camera, documents from the Board as well as the victim's medical records. The court agreed with the amount the Board ordered as restitution. On appeal, defendant requests we review the sealed records considered by the Board and the trial court to determine whether the restitution order is an abuse of discretion. Having done so, we find no abuse of discretion and therefore we affirm the order.

## I FACTS

In 2009, defendant was convicted of hit and run with injury (Veh. Code, §§ 20003, 20004), misdemeanor assault (Pen. Code, §240),<sup>1</sup> misdemeanor battery (§ 242), and vandalism (§ 594, subds. (a), (b)(2)(A)). The jury found true an enhancement on the assault charge that defendant had personally inflicted great bodily injury. (§ 12202.7, subd. (a).)

The victim was defendant's mother-in-law, Eufemia Santos. More details are available in our prior opinion in this matter, but in sum, she was dragged about 12 feet by defendant's car, kicked by him "many, many, times," grabbed and pushed. After the incident, she could not feel her head or her feet, and her face was bleeding. She spent four days in the hospital. "Several months later, Santos had a scar at the bridge of her nose, large bruises on her elbow, knees and shoulder and 'a mark' on her right hip and one on her right hand, too. Since the incident, Santos had not been able to kneel and her hands get numb. The first officer on the scene said he found 'an elderly female laying in

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<sup>1</sup> Subsequent statutory references are to the Penal Code unless otherwise indicated.

the street moaning and groaning, bleeding from the head, and had several injuries to her body, arms, legs, things like that.”” (*People v. Lopez* (Mar. 21, 2011, G043191) [nonpub. opn.] )

The court sentenced defendant to one year in jail, ordered no contact with the victim, and, among other fines and fees, ordered defendant to pay restitution to the victim in the amount of \$9,177.44. The court retained jurisdiction over the restitution order. In March 2011, this court affirmed defendant’s conviction. (*People v. Lopez, supra*, G043191.)

In November 2011, the Board issued an order to pay an additional \$5,669.72 to the victim for mental health and medical treatment, and loss of income. Defendant requested and was granted a contested hearing with regard to this additional amount.

The court conducted a hearing on the matter in March 2015, hearing testimony from Saira Lopez, the victim’s daughter (who is also defendant’s wife). Prior to the incident, Lopez had lived with her mother. She moved out the day after her mother came home from the hospital, and had no contact with her after that point with the exception of one visit two weeks after the incident.

Lopez testified that she doubted the truthfulness of the documentation her mother had offered in support of the claim because she was released from the hospital the day after the incident with no major injuries. Her mother did not complain about any injury when she spoke to her on the phone that day. Her mother stayed with Lopez’s aunt for several weeks before returning home.

Based on information from a third party, she also stated her mother did not miss as much work as she claimed and did not need help. According to the third party, her mother’s work schedule remained the same after the incident, working six nights per week.

In addition to this testimony, the court also reviewed approximately 180 pages of materials that had been considered by the Board. The matter was submitted to the court, which, after review, ordered additional restitution in the amount of \$5,669.72. Defendant filed the instant appeal.

## II DISCUSSION

Defendant does not assert the court's order was erroneous. Instead, he asks us to make an independent review of the sealed materials upon which the court based the order to determine if there was an abuse of discretion. As the Attorney General agrees, this is an appropriate request. (See, e.g., *People v. Hobbs* (1994) 7 Cal.4th 948, 971.)

We review restitution orders for abuse of discretion. (*People v. Phu* (2009) 179 Cal.App.4th 280, 284.) “‘A victim’s restitution right is to be broadly and liberally construed.’ [Citation.] “‘[S]entencing judges are given virtually unlimited discretion as to the kind of information they can consider’” in determining victim restitution. [Citations.]” (*Id.* at pp. 283-284.) “‘While it is not required to make an order in keeping with the exact amount of loss, the trial court must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.’” (*People v. Mearns* (2002) 97 Cal.App.4th 493, 498.)

Having completed our review of the same documents the court considered, we conclude the restitution order was not an abuse of discretion. Lopez’s testimony,<sup>2</sup> based largely on second hand knowledge and family dynamics the trial court characterized as “somewhat dysfunctional,” was contradicted by the documents provided to the Board. These documents verified the victim’s income and time away from work as a result of the crime; her medical bills, including the testing and lab work she underwent;

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<sup>2</sup> The trial court stated it “did not find [Lopez’s testimony] to be extremely credible at all.”

prescription costs; and costs of mental health treatment. All of the expenses claimed were supported by adequate documentation, and accordingly, we find no abuse of discretion in the court's entry of the restitution order.

### III

#### DISPOSITION

The order is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.